

§ 3.7

by the Immigration Judge or a Service officer.

[61 FR 18907, Apr. 29, 1996; 61 FR 21065, May 9, 1996, as amended at 63 FR 27448, May 19, 1998]

§ 3.7 Notice of certification.

Whenever, in accordance with the provisions of § 3.1(c), a case is certified to the Board, the alien or other party affected shall be given notice of certification. An Immigration Judge or Service officer may certify a case only after an initial decision has been made and before an appeal has been taken. If it is known at the time the initial decision is rendered that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be required. If it is not known until after the initial decision is rendered that the case will be certified, the office of the Service or the Immigration Court having administrative control over the record of proceeding shall cause a Notice of Certification to be served upon the parties. In either case, the notice shall inform the parties that the case is required to be certified to the Board and that they have the right to make representations before the Board, including the making of a request for oral argument and the submission of a brief. If either party desires to submit a brief, it shall be submitted to the office of the Service or the Immigration Court having administrative control over the record of proceeding for transmittal to the Board within the time prescribed in § 3.3(c). The case shall be certified and forwarded to the Board by the office of the Service or Immigration Court having administrative jurisdiction over the case upon receipt of the brief, or upon the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief. The Board in its discretion may elect to accept for review or not accept for review any such certified case. If the Board declines to accept a certified case for review, the underlying decision shall become final on the date the Board declined to accept the case.

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§ 3.8 Fees.

(a) *Appeal from decision of an Immigration Judge or motion within the jurisdiction of the Board.* Except as provided in paragraph (c) of this section or when filed by an officer of the Service, a Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR-26) filed pursuant to § 3.3(a), or a motion related to Immigration Judge proceedings that is within the jurisdiction of the Board and is filed directly with the Board pursuant to § 3.2(g), shall be accompanied by the fee specified in applicable provisions of § 103.7(b)(1) of this chapter. Fees shall be paid by check or money order payable to the “United States Department of Justice.” Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency. A remittance shall not satisfy the fee requirements of this section if the remittance is found uncollectible.

(b) *Appeal from decision of a Service officer or motion within the jurisdiction of the Board.* Except as provided in paragraph (c) of this section, a Notice of Appeal to the Board of Immigration Appeals of Decision of District Director (Form EOIR-29), or a motion related to such a case filed under this part by any person other than an officer of the Service, filed directly with the Service shall be accompanied by the appropriate fee specified, and remitted in accordance with the provisions of § 103.7 of this chapter.

(c) *Waiver of fees.* The Board may, in its discretion, authorize the prosecution of any appeal or any motion over which the Board has jurisdiction without payment of the required fee. In any case in which an alien or other party affected is unable to pay the fee fixed for an appeal or motion, he or she shall file with the Notice of Appeal (Form EOIR-26 or Form EOIR-29) or motion, an Appeal Fee Waiver Request, (Form EOIR-26A). If the request does not establish the inability to pay the required fee, the appeal or motion will not be deemed properly filed.

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